



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

April 7, 1953

Hon. R. A. Barton
County Attorney
Calhoun County
Port Lavaca, Texas

Letter Opinion No. MS-17

Re: Several questions relating to the
authority of the commissioners'
court respecting petitions call-
ing for creation of navigation dis-
tricts.

Dear Mr. Barton:

Your request for an opinion of this office relates to the cre-
ation of proposed navigation districts for Calhoun County, Texas. A peti-
tion seeking the creation of a navigation district was presented to the com-
missioners' court on February 10, 1953, pursuant to the provisions of Ar-
ticle 8263e, V.C.S. Subsequently, on February 11, 1953, another petition
was presented to the commissioners' court under Article 8263h, V.C.S.,
which included, among other territory, the same land included in the first
petition. The first petition was set for hearing on April 16, 1953, and we
have been informed that the second petition is set for hearing on April 9,
1953.

Your questions are:

1. May the commissioners' court set a hearing on the sec-
ond petition on a date that is prior to the date of the hearing on the first
petition?
2. Must the date of the hearing on the second petition be
computed from the date of presentation?
3. May the two districts be created so as to overlap?
4. Does the filing of the first petition take priority over the
second petition?

Section 2 of Article 8263e and Section 1 of Article 8263h pro-
vide that navigation districts may be created in this State pursuant to Sec-
tion 59, Article XVI, of the Constitution of Texas. These districts may or
may not include within their boundaries and limits villages, towns, cities,
road districts, drainage districts, irrigation districts, levee districts, and
other improvement districts and municipal corporations of any kind, or any
part thereof.

The primary distinction between the two statutes authorizing the creation of navigation districts appears to be in the provisions relating to management.

Section 2 of Article 8263h provides that upon the presentation of a petition for the creation of a navigation district, the commissioners' court must set the same for hearing "not less than thirty nor more than sixty days from the presentation of said petition." It is our opinion that in your factual situation the commissioners' court can set the hearing for the second petition on a date prior to the setting on the first petition. Moreover, it is our opinion that the mandatory provisions of Section 2 of Article 8263h compel the commissioners' court to compute the date of the hearing on the second petition from the date of presentation. Inasmuch as the two petitions are before the same tribunal and not distinct tribunals, it would appear that the commissioners' court of Calhoun County should hear both petitions. After the hearing on the petition set for April 9, the court should adjourn and conduct a hearing on April 16 on the other petition.

After conclusion of the hearings on the petitions, it is within the discretion of the commissioners' court to determine if the improvements of either or both of the districts are feasible or practicable and whether either or both would be a public benefit. If the court should find that the improvements by either or both of the proposed districts would not be feasible or practicable or that either or both would not be a public benefit and that the establishment of either or both such districts is unnecessary, the court should enter its findings and dismiss the petition or petitions. If, however, the fact-finding body should be of the opinion that both districts are feasible or practicable and a public necessity, it is our opinion, in answer to your third question, that these districts may overlap the same area. It is assumed, however, that these proposed districts are not identical in purpose but contemplate distinct and separate improvements. In Attorney General's Opinion MS-05, dated March 3, 1953, it was stated:

"We find nothing in the above law creating the Panhandle Water Conservation Authority conflicting with, or showing an intention to repeal, the operation of the general laws in the territory included within the Authority. Nor do we find any other statutory provision or any constitutional provision prohibiting the creation of the proposed Canadian River Water Control and Improvement District within the area comprising the Panhandle Water Conservation Authority.

"In analogous situations independent districts have been included within existing authorities, such as the Lower

Hon. R. A. Barton, page 3 (MS-17)

Colorado River Authority and the Brazos River Conservation and Reclamation District, pursuant to the provisions of Article XVI, Section 59."

Likewise, we have been unable to find any constitutional or statutory authority prohibiting the creation of overlapping navigation districts in the same area if a fact-finding body, pursuant to law, determines the necessity therefor and that such districts are feasible, practicable, and a public benefit.

Our answers to your first three questions make unnecessary an answer to your fourth question.

Yours very truly,

JOHN BEN SHEPPERD

By
Burnell Waldrep
Assistant

BW:wb/cm